

**REPORT TO THE ADVISORY COMMITTEE
FOR THE SITING OF AN SVP TRANSITIONAL FACILITY
IN MILWAUKEE COUNTY**

(Submitted pursuant to 2003 Wisconsin Act 187)

**Department of Health and Family Services
Sand Ridge Secure Treatment Center
June 1, 2004**

Report to the Advisory Committee for the Siting of an SVP Transitional Facility in Milwaukee County

Background

2003 Wisconsin Act 187 created an advisory committee to assist the State in determining the location of a transitional facility in Milwaukee County for the housing of persons committed to the custody of the Department of Health and Family Services under Chapter 980 of the Wisconsin Statutes (Sexually Violent Persons Law). This legislation specified that the advisory committee should submit a report to the Department of Corrections and the Department of Health and Family Services recommending at least three specific locations that the committee determines are appropriate for the placement of the facility.

2003 Wisconsin Act 187 also directed the Department of Health and Family Services to submit a report to the committee intended to assist the committee in its deliberations. Specifically, the act directs the following:

“No later than June 1, 2004, the department of health and family services shall provide the committee an estimate of the maximum number of persons likely to be placed in Milwaukee County on supervised release under section 980.06, 1997 stats., or section 980.08 of the statutes at any time between that date and February 1, 2009.”

This report transmits the official DHFS estimate of the number of placements that will need to be accommodated at the Sexually Violent Persons (SVP) transitional facility. This estimate is driven by a number of significant concepts and understandings that the Department has determined to be appropriate when considering this issue. Prior to detailing the specific number of Supervised Releases, this report discusses various concepts and understandings in order for the committee to have a more complete understanding of the total issue.

Transitional Facility Concept

Given the ongoing difficulty of finding appropriate Supervised Release placements for SVP's in Milwaukee County, there is a natural tendency to conceptualize the transitional facility as being the answer to everyone's concerns about community placements for individuals committed as SVP's. Unfortunately, this oversimplification can create unrealistic expectations about the role that this sort of facility can play in the overall program. Accordingly, it is very important to be clear about the concepts associated with a transitional facility.

The following points highlight the major concepts associated with such a facility:

- The facility will be a means of “transition” from a secure institution to independent living in the community. Transitional placements are based on individual needs related to supervision and treatment. It is anticipated that a transitional placement in such a facility would be no more than six months to a year. As a result, it is important to bear in mind that after completing a stay at the transitional facility, a person on Supervised Release would need to move on to some other placement in the county.
- There is a range in the level of services that may be provided by the facility. At the low end of the services is the alternative of conceptualizing the facility as being the equivalent of State-owned and operated housing services—i.e., an apartment-like setting. At the higher end of services would be the option of licensing the facility as a Community Based Residential Facility (CBRF), which would require the facility to meet the licensing requirements for providing mental health related residential services. There may be options between these two alternatives that the Department may want to consider.
- Regardless of the specific level of service that the facility would be providing, it is important to understand that this facility should not be seen as the equivalent of a mini-secure institution. Clearly, the Department would attempt to build into the facility and its processes as much safety as possible, but this facility could not feasibly be constructed and operated in a manner consistent with a truly “secure” institution. For example, if the facility is operated as a CBRF, it will need to meet stringent licensing requirements for providing mental health related residential services. Those placed at such a facility will be patients with patient rights and therefore the facility will not be licensed as a correctional CBRF. The level of “security” will need to be balanced with patient rights. Furthermore, the individuals placed at this sort of facility will have been approved for a “community” placement, which means that the individuals would have to have access to the community.
- Given that over one-fourth of the SVP population is from Milwaukee County, it is essential that the transitional facility not be utilized as an alternative placement to institutional placement at the Sand Ridge Secure Treatment Center (SRSTC)—i.e., house SVP’s from Milwaukee County in this facility in an effort to house them closer to their home county. Individuals should be placed in the transition facility only if the Court determines that the person is appropriate for placement in the community under Supervised Release. In particular, there are a number of specific circumstances that are worthy of consideration:
 1. The facility may be particularly attractive to the Courts and experts who advise Courts on release issues as an alternative in cases where the person is elderly or in need of nursing care. It is essential that the facility not be conceptualized as being appropriate for indefinite, long-term, community placements.

2. Patients who are already placed in the community will not transfer from independent living situations to the facility, unless court ordered as an alternative to revocation. Per the “least restrictive” concept that guides all civil commitments, patients can not be transferred to a more restrictive setting unless they have violated their rules of supervision or require a more restrictive setting for clinical or supervision reasons.
 3. The facility should not be used as a transition for discharge. In those cases, unless the person has concurrent supervision with the Department of Corrections, the individual is discharged in the community with no supervision. Patients may be recommended for discharge because they no longer meet the criteria for commitment, which also means they do not meet the criteria for Supervised Release. However, courts may choose to maintain the commitment and order Supervised Release to the transitional facility, which may significantly impact on placements at such a facility including those who may be disruptive to the milieu if they have not made significant progress in treatment. In the last several years, two Milwaukee County residents were directly discharged from SRSTC because of a Court determination that they no longer met the conditions for an SVP commitment. In neither of these cases had the patient made significant progress in treatment, and accordingly, neither would have been appropriate for placement at a transitional facility.
 4. Another issue that bears noting is the possibility that Courts in other counties may view a state-operated transitional facility in Milwaukee County as being readily accessible by all counties. It is important to note that the State does not own or operate transitional facilities for sex offenders anywhere else in the State. Accordingly, Courts may find such a facility an attractive alternative and order placement of non-residents. The estimate presented in this paper is based on the assumption that releases to this facility are restricted to Milwaukee County residents; however, it may be appropriate to amend the statutes to clearly restrict such placements.
- Under the provisions of 2003 Wisconsin Act 187, the advisory committee is directed to recommend “at least 3 specific locations that the committee determines are appropriate for the placement of the facility.” An alternative that the committee may wish to consider during its deliberations is the possibility of locating the facility at more than one location. In other words, rather than building one 10-bed facility at one site, there may be merit in having two 5-bed facilities located at different sites. This approach—aside from reducing the size of the facility located at any one location and presumably reducing potential negative impacts on a specific location—would facilitate establishing differing program and privilege levels between the two facilities.

- Assuming that the Committee completes its report in the time frame established by the law (December 31, 2004), it is important to note that there will be a considerable delay before the facility is actually available for use. Under the standard State building process, it is reasonable to assume that it would be necessary for there to be 18-24 months before the facility could be opened. During this time period, a variety of activities would need to occur, including selection of a specific site by the State, the selection of an architectural firm, project design, environmental assessment, contract bidding, and construction.

Projected Milwaukee County Supervised Release Placements

Currently there are 75 residents of Milwaukee County who are either detained (14) or committed (61) pursuant to Chapter 980. Milwaukee County residents account for 28% of the total Chapter 980 population. Of the 61 who are committed, one is already placed on Supervised Release in Milwaukee County and two are awaiting placement and will presumably be placed this year in independent living situations.

For a variety of reasons, the projection of the number of Supervised Releases for the following five-year period (2003 Act 187 calls for a projection through January 2009) is a very difficult task. The following factors contribute to this uncertainty:

1. The Courts make release decisions. Thus, any projection of releases not only has to anticipate the institutional behavior and treatment progress of patients, but also has to make assumptions about the Courts' assessments of these facts.
2. It is not uncommon for there to be differences of opinion between the Courts, evaluators and the Chapter 980 treatment program. Thus, even if the evaluators and/or the treatment program do not see an individual as appropriate for Supervised Release, the Court may reach a different conclusion. Similarly, clinical staff may view an individual as appropriate for consideration for Supervised Release, but the Court may reach a different conclusion.
3. It is not uncommon for patients to have to be moved back in treatment as a result of the discovery of new treatment issues or the emergence of problem behaviors within the institution. Thus, it should not be assumed that patients always demonstrate steady progress in their treatment programs.
4. The establishment of a transitional facility to house SVP's in Milwaukee County may have the impact of increasing the number of Supervised Releases granted by the Courts. In effect, Courts may tend to view the availability of this facility as akin to a safety net for these sorts of decisions.
5. 2003 Act 187 made a number of changes in the criteria that Courts use when considering Supervised Release requests. Thus, past trends may not reflect changes that may occur because of these new criteria. Specifically, as a result of the recent

legislative changes, it is reasonable to assume that the revised commitment standard (“likely” to re-offend as compared to the previous standard of “much more likely” to re-offend) and the creation of the requirement that “significant progress” in treatment is necessary in order for a Supervised Release petition to be granted will serve to reduce the number of Supervised Releases granted in the short-term. On the other hand, it is equally reasonable to assume that the long-term impact of the revised commitment standard will be to ultimately increase the number of Supervised Releases granted—i.e., the number of commitments will increase, which inevitably is going to increase the number of Supervised Releases.

Notwithstanding the previous point, a logical starting point for a projection is the latest experience that existed prior to the changes in Chapter 980. In the last year, the Supervised Releases granted to Milwaukee County residents equated to approximately 5% of the eligible population. Thus, for the purposes of this report, it is assumed that a 5% release rate equals the base line for likely Supervised Releases. However, given the anticipated short-term impact of the recent changes that will reduce Supervised Releases, it is assumed that the releases granted in 2004 and 2005 will be below this base line rate. For the purpose of establishing a reasonable range for the upper limit on the number of Milwaukee County Supervised Releases, this report reflects a potential doubling of the release rate starting in 2006. The following table reflects the range in the number of releases that is produced as a result of these different assumptions.

TABLE I

Projected Range of Milwaukee County
Supervised Releases by Calendar Year

	CY2004	CY2005	CY2006	CY2007	CY2008	Jan.2009
Base Line of 5% Release	2	2	4	5	5	1
Release Rate of 10%	2	2	8	10	10	2

As reflected in the table, under the previously stated assumptions, the potential range in the number of Supervised Releases approved for Milwaukee County residents ranges from a low of 2 annually to a high of 10 annually. Per the earlier discussion that placement in a transitional facility needs to be time-limited, and assuming that the maximum length of stay will be approximately 12 months in duration, Table 1 indicates that a 10-bed facility would likely be adequate to accommodate the upper range of

potential releases by the Courts. It would be reasonable, however, to anticipate that delays may occur in certain cases in terms of moving the person into a more independent community setting. Accordingly, it would be prudent to build a limited number of extra beds into the transitional facility that would afford the flexibility to respond to these sorts of circumstances.

Conclusion

There is no valid methodology that can be used to establish a precise estimate of the number of Supervised Releases that are going to be granted over the next 4 and 1/2 years. Instead, the Department believes that it is appropriate to state this figure as a potential range. The purpose of this estimate is to advise the committee as to the size of the transitional facility that needs to be sited. As presented in this report, and assuming that the concepts presented earlier in this report are generally followed in release decisions, the Department believes that a 10-12 bed transitional facility will be sufficient to meet the foreseeable needs in Milwaukee County.